IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (Ord) No.95 of 2001.

Reserved on:16.06.2007.

Decided on: July 16, 2007

Chandermani Sharma ***..Appellant.***

VERSUS

State of H.P. & Anr. ***..Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: **Mr.Ajay Kumar, Advocate.**

For the respondents: **Mr.M.L.Chauhan, Addl. Advocate General.**

Kuldip Singh, Judge

The plaintiff is in appeal against the judgment and decree dated 1.1.2000 passed by learned District Judge, Shimla in Civil Appeal No.71-S/13 of 1997 setting aside the judgment and decree dated 16.7.1997 passed by learned Senior Sub Judge, Shimla in case No.96/1 of 97/90 and returning the plaint to the plaintiff.

2. The facts, in brief, are that plaintiff / appellant filed a suit for declaration that he is owner in possession of 85 Bighas land out of the land bearing Khasra No.184 and 2-7 Bighas land out of land bearing Khasra No.62 situated in Mauza Khalag, Pargana Bagi, Tehsil and District Shimla. He has also prayed for mandatory injunction

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

directing the defendants either to remove the debris and boulders thrown on the suit land in the course of construction of Jubbar Hatti Airport road and to restore the land to its original condition or to take immediate steps for acquisition of the suit land.

3. The plaintiff has pleaded that he is owner of land measuring 49-18 Bighas bearing Khasra Nos.75, 53, 295/25 and 22 situated in Mauza Khalag, Pargana Bagi. Land measuring 223-19 Bighas bearing Khasra No.184 and 6-19 Bighas bearing Khasra No.62 situated in Mauza Khalag is recorded as *Shamlat Hasab Rasad Araji Khewat* in the column of ownership and it is shown in possession of *Makbuja Malkan,* in the column of rent, the entry is *Mal Shamal Khewat (*revenue is included in the respective *Khewats*) and, therefore, the same was not *shamlat* land within the meaning of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and it could not have vested in the Panchayat under the provisions of said Act and later on in the State under the H.P. Village Common Lands (Vesting and Utilization) Act, 1974 (for short 'the Act'). Plaintiff being one of the Khewatdars and his share in the Khewat being one third, he is owner to the extent of one third area of Khasra No.184 which comes to 85 Bighas and one third area of Khasra No.62 which comes to 2-7 Bighas.

4. The further case of the plaintiff is that he is coming in continuous possession of suit land since the time of his predecessors. The defendants while constructing the Airport at Jubbar Hatti threw

debris on 18 -13 Bighas portion of Khasra No.184 and 2-7 Bighas area of Khasra No.62 belonging to the plaintiff due to which said portions were badly damaged. The plaintiff made many requests to Land Acquisition Collector to assess the damage caused to the aforesaid two portions of the suit land, but no heed was paid.

5. A writ petition was filed being CWP No.113 of 1987 in the High Court and a direction was issued to defendant No.2 Land Acquisition Collector to assess the damages, payable on account of damage caused to the land of private owners in the course of construction of Airport. The defendant No.2 assessed the compensation of Khasra No.184 measuring 18-4 Bighas which is different from 18-13 Bighas allegedly belonging to plaintiff and damaged by throwing debris and no compensation was assessed with respect to suit land belonging to the plaintiff. The plaintiff served a notice under Section 80 C.P.C. on defendant No.1 and ultimately filed the suit.

6. In the written statement, defendants have taken the plea that suit is not maintainable, the plaintiff is estopped from filing the suit and he has no *locus standi* nor did he has any cause of action. The State of Himachal Pradesh is the owner of the suit land. It has been denied that the suit land is owned and possessed by plaintiff. The suit land had vested in the State of Himachal Pradesh under the Act and before that it had vested in Gram Panchayat under the provisions of Punjab Village Common Lands (Regulation) Act. The plaintiff became

owner in the village when Molku gifted one sixth share in the Khewat in his favour and his claim that he is owner in possession to the extent of one third share in the Khewat is incorrect. A major portion of Khasra No.184 to the extent of 115-3 Bighas had been allotted to different persons in accordance with the Scheme formulated under the Act and those persons are in possession of the land allotted to them.

7. The learned trial Court dismissed the suit against which the plaintiff filed the appeal and the learned District Judge held that jurisdiction to determine the issue raised by the plaintiff rests with the Collector, hence, the learned District Judge set aside the judgment and decree of the trial Court and ordered return of plaint to the plaintiff.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the plaintiff has submitted that learned District Judge has erred in setting aside the judgment and decree of the trial Court and returning the finding that civil Court has no jurisdiction. It has been submitted that suit land was not shamlat land and civil Court has jurisdiction to try the suit. The learned Additional Advocate General has supported the impugned judgment and decree.

10. It is the case of the plaintiff that suit land was not shamlat land, therefore, it could not have vested under Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 in Panchayat and thereafter in the State under the Act. According to the plaintiff,

once suit land is not shamlat land, therefore, the civil Court can go into the question in the present suit and grant the relief to the plaintiff. The submission of learned Additional Advocate General is that the question itself whether the suit land is shamlat or not is beyond the scrutiny of the civil Court inasmuch as this question is to be determined by the Collector under the Act. He has submitted that under Section 10 of the Act jurisdiction of the civil Court is barred.

11. A perusal of the plaint would show that plaintiff has questioned the vesting of the suit land under the Act even though he has not specifically prayed for setting aside the vestment order. The substance of the plaint is to be seen and the clever drafting of the plaint will not give jurisdiction to the civil Court if it is otherwise barred under the Act. The submission of the learned counsel for the plaintiff that plaintiff has simply prayed for declaration of his title and he has not challenged the vesting of the land in the State under the Act has no force. Firstly, from the perusal of the plaint, it is clear that plaintiff has challenged the vesting of the suit land in the State under the Act and secondly while considering the relief of declaration of the plaintiff the vesting of the suit land in the State is definitely required to be considered and unless vesting of the suit land in the State under the Act is not set aside the plaintiff is not entitled to any relief. The question again is whether civil Court can go in this question.

12. In ***Gram Panchayat Khunyara Etc. Versus State of Himachal Pradesh Etc. ILR 1978 (Himachal Seris) 225],*** a Full Bench of this Court has held as follows:-

> "We are of the opinion that all inquiries with regard to vesting of a particular piece of land in the State Government can be conducted by the Collector under Rule 9 quoted above. The scheme which is envisaged is that vestment contemplated by the impugned Act is immediate under Section 3. Under Rule 8, Form 'C' which prescribes the Form of Tehsil Register of demarcation of Shamilat land, entries are required to be made in the said Register. Under sub-section (5) of Section 3 it is provided that the Collector may, by order in writing, at any time after the land has vested in the State Government, direct the landowners to deliver possession thereof within ten days from the service of the order to such person as may be specified in the order. Now, before the Collector proceeds under sub-section (5) of Section 3, there is a scope of dispute arising regarding entry of land having been vested in the State Government. Therefore, it is clear that the enquiry contemplated by Rule 9 should be started before action under sub-section (5) of Section 3 is taken. The result, therefore, is that after vesting contemplated by Section 3 of the Act is presumed to have taken place, the Collector is bound to enquire into and consider the disputes relating to this vestment. This enquiry is of a summary nature and is required to be conducted by the Collector in accordance with the procedure prescribed in rules made under the

Punjab Land Revenue Act, 1887. Section 9 of the impugned Act provides for an appeal against the order passed by the Collector in such an enquiry. This appeal lies to the State Government. It would be only after the matter is finally settled, through appeal or otherwise, that proceedings contemplated by sub-section (5) of Section 3 with regard to taking of the possession can be undertaken, because till then it would not be clear whether a particular piece of land has legally vested in the State Government or not.

We may revert to the provisions of sub-section (2) of Section 3, which is already referred to above. So far as this sub-section (2) is concerned, the Collector shall have to ascertain whether a particular case falls within any of its three clause (a), (b) and (c). It would be only thereafter that it can be ascertained whether the land which is said to be covered by the provisions of sub-section (2) legally vests in the State Government or not. It need not be emphasized that if as a result of the enquiry, conducted by the Collector under Rule 9, it is found that a particular piece of land does not fall within the definition of the word 'land', as given in clause (f) of Section 3, as explained by us in this judgment, or that provisions of sub-section (2) of Section 3 apply to such land, the Collector will have to arrive at a conclusion that that land does not legally vest in the State Government."

13. In ***Dalip Singh & Others Versus State of H.P. & Others [1992 (1) Sim.L.C. 320],*** a learned Single Judge of this Court, after

noticing (*Gram Panchayat Khunyara's case supra)*, has held as follows:-

> "The Full Bench also found that the Collector was also bound to ascertain whether a particular case falls within any of the three exceptions enumerated in sub-section (2) of Section 3 of Himachal Act and it would be only thereafter that it could be ascertained whether the land which is said to be covered by the provisions of sub-section (2) of section 3 of Himachal Act and it would be only thereafter that it could be ascertained whether the land which is said to be covered by the provisions of sub-section (2) of section 3 legally vests in the State or not. As observed by the Full Bench in Gram Panchayat Khunyara's case (supra) and as is apparent from the reading of the Himachal Act, there is an adequate remedy provided for what the Civil Courts would normally do in suits, namely, whether particular land has or has not vested in the State Government. The Act also provides for the remedy to carry the matter in appeal against an order passed by the Collector. In these circumstances, it can be said that the Himachal Act gives a finality to the orders passed by the Collector or the State Government and jurisdiction of Civil Court is ousted to entertain and decide a suit of the nature but, as observed above, section 10 of the Himachal Act does not exclude those cases where it is shown that provisions of a particular Act have not been complied with or that the Collector or the State Government has not acted in conformity with the fundamental principles of judicial procedure. The primary relief claimed by the plaintiffs with regard

to declaration of their rights as owners cannot be gone into in view of the jurisdictional bar created under section 10 of the Act for which appropriate forum would be the Collector as observed in Gram Panchayat Khunyara's case.. …"

14. In ***Ram Singh & Others Versus Gram Panchayat Mehal Kalan & Others [(1986) 4 SCC 364],*** the Supreme Court has held as follows:-

"Section 13 of the Act provides that no civil court shall have jurisdiction to entertain or adjudicate upon any question whether any property or any right to or any interest in any property is or is not *shamlat deh* vested or deemed to have been vested in a Panchayat under the Act or to question the legality of any action taken by the Commissioner or the Collector or the Panchayat under the Act or in respect of any matter which the Commissioner or the Collector is empowered by or under the Act to determine. The contention of the Panchahyat before the trial Court was that the land in question was *shamlat deh* and it had been vested in it.

It is no doubt true that the plaintiffs who claimed to be the owners along with some others of the suit land had avoided to seek a declaration that the suit land was not *shamlat deh.* They had, however, questioned the correctness of the entries in the revenue records which showed that the Panchayat was entitled to the suit land. The plaintiffs cannot by drawing their plaint cleverly by not claiming a

declaration that the land in question was not *shamlat deh* confer jurisdiction on the civil court when by virtue of Section 13 of the Act the jurisdiction of civil courts to try such suits had been taken away. In the instant case the suit had been filed against the Panchayat and the Panchayat had expressly claimed that the land in question belonged to it as *shamlat deh.* It will not be possible in the circumstances for the civil court to make a declaration in favour of the plaintiffs without deciding the question whether the property in question was *shamlat deh* or not and whether it belonged to the Panchayat or not….."

15. In ***Babu Ram & Others Versus Gram Sabha, Buhavi & Another [AIR 1988 SC 1085],*** the Supreme Court has held as follows:-

"It is, however, submitted by Mr.Harbans Lal, learned Counsel appearing on behalf of the appellants, that there is no dispute as to the question whether the suit land is shamilat deh or not. The appellants admit that the suit land is shamilat deh. The only question that has to be decided in the suit is whether the appellants have acquired title to the suit land by adverse possession. Accordingly, it is contended that S. 13(a) (i) is not applicable and Civil Court will have jurisdiction to decide the suit instituted by the appellants.

Even assuming that S.13(a((i) is not applicable and that the question to be decided in the suit is whether the appellants have acquired title to the suit land which is shamilat deh within the

> meaning of S. 2(g) of the Act, still the Civil Court will have no jurisdiction to try the suit in view of S. 13(a)(ii) of the Act, for the question would be whether the suit land vests or does not vest in the Gram Sabha… …"

16. The cumulative effect of above decisions is that civil Court cannot go into the question whether land is shamlat or not. The Collector under the Act has the jurisdiction to go into the question whether land is shamlat or not. The Section 10 of the Act puts a bar on the civil Court to go into the question of vesting of land under the Act in the State. This being the situation, the civil Court has no jurisdiction to go into the question whether the suit land is shamlat land or not. The learned counsel for the plaintiff has failed to make out any case for interference regarding the conclusion of learned District Judge that civil Court has no jurisdiction to decide whether the suit land is shamlat land or not. To be fair to the learned counsel for the plaintiff, he has cited some judgments on the point that once the land is not found to be shamlat land then civil Court can go into the question and give the requisite declaration. But that stage can come only if the civil Court can go into the question. As I have already come to the conclusion that in the present case civil Court has no jurisdiction to go into the question whether the suit land is or is not shamlat land, therefore, I do not feel necessary to refer those judgments.

17. The issue No.6 is of adverse possession. I have gone through the plaint and the plaintiff has not made any specific prayer

that he has become owner of the suit land by way of adverse possession, but for considering the plea of adverse possession as per ***Babu Ram's case (supra),*** the question of vestment of the land under the Act becomes necessary and, therefore, civil Court has no jurisdiction.

18. The result of above discussion is that the civil Court has no jurisdiction to try the suit. The learned District Judge has appreciated the material on record in right perspective. The learned counsel for the plaintiff / appellant has failed to make out any case for interference. The appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge.

July 16, 2007
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